**Medeco Security Locks, Inc.** ***and*** **International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO.** Case 11–CA–16215

September 29, 1995

## DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On July 21, 1995, Administrative Law Judge Howard I. Grossman issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Medeco Security Locks, Inc., Salem, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We also find no merit in the Respondent's allegations that the judge's resolutions of credibility, findings of fact, and conclusions of law are the result of bias and prejudice. There is no basis for finding that bias and prejudice exist merely because the judge resolved important factual conflicts in favor of the General Counsel's witnesses. *NLRB v. Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949).

*Michael W. Jeannette, Esq.*, for the General Counsel.
*Clinton S. Morse, Esq.* and *Todd A. Leeson, Esq. (Woods, Rogers & Hazelgrove)*, of Roanoke, Virginia, for the Respondent.
*Charles J. Van Dellen*, Treasury Secretary District 1, of Ben Mountain, Virginia, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

HOWARD I. GROSSMAN, Administrative Law Judge. The original charge was filed on September 23, 1994,[1] by International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO (the Union). Complaint issued on October 24, and was twice amended before the hearing and again at the hearing. It alleges that Medeco Security Locks, Inc. (Respondent or Company) restricted its employees' communications with other employees regarding the terms and conditions of their employment, and threatened employees with discipline for communicating such terms and conditions to other employees, in violation of Section 8(a)(1) of the National Labor Relations Act (the Act). The complaint also alleges that Respondent changed the shift assignment of employee William C. Folden and later discharged him because of his union activities, in violation of Section 8(a)(3) and (1) of the Act.

A hearing was held before me on these matters in Roanoke, Virginia, on March 16, 1995. Thereafter, the General Counsel and the Respondent filed briefs. Based on the entire record, including my observation of the demeanor of the witnesses, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

Respondent is a Virginia corporation with a facility at Salem, Virginia, where it is engaged in the manufacture of locks. During the 12 months preceding issuance of the complaint, a representative period, Respondent purchased and received at its Salem, Virginia facility goods and raw materials valued in excess of $50,000 directly from points outside the Commonwealth of Virginia. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

##### A. *The Work History and Union Activities of William C. Folden*

Folden had been an employee for about 18 years prior to his discharge in May 1994. He had previously been a supervisor for about 3 years. Stephen Bullock, his supervisor, testified that he was a good employee who had not received any written warnings.[2]

There was a union campaign in 1993 in which Folden was active. He was an observer at a Board election (which the Union lost). Union official Charles Van Dellen testified that Folden was one of the most vocal participants in the 1993 campaign. Supervisor Bullock testified that Folden told him about this activity.

The Union began another campaign in late 1993. Supervisor Bullock testified that, in January 1994, Folden told him that he had been contacted by the Union, but that they would have to do without him. Manager of Human Resources Diane Ward gave similar testimony. Folden denied telling Bullock that the Union would have to do without him, but agreed that, in late 1993, he told Bullock that he was not interested in any further organizational activity. Nonetheless, Folden attended union meetings during the 1994 campaign and obtained signatures on authorizations cards in the parking lot.

[1] All dates are in 1994 unless otherwise specified.

[2] Bullock was no longer employed by Respondent at the time of his testimony.

Dennis Taggert, vice president of human resources, testified that he learned of the new campaign, and discussed it with counsel in December 1993. He decided to show films to the employees. According to Folden, they portrayed union violence. Taggert testified that he instructed his supervisors to tell employees not to sign union cards. According to Bullock, the supervisors discussed information learned from the plant floor and cards picked up in the restroom.

The Company was engaged in a process which it called ''team building.'' In this connection, it held ''cross functional'' meetings, and one was held on February 4. Folden was present, and stated that supervisors were there. An employee named Norma Dowdy told him that she had to make a report of the meeting to the Company's president. Dowdy acted as chairperson in the absence of the regular chairperson. According to Folden, Dowdy asked him how the union campaign was going and whether the Union had enough cards to file a petition.

Folden later discussed this matter with Supervisor Bullock and said that he thought Dowdy's inquiry was inappropriate. Bullock asked why the employees wanted a union, and Folden replied because of unfairness and favoritism. Bullock suggested that Folden speak with Vice President Taggert, and Folden did so.

### B. *The ''QS-1'' Employee Training Program*

The record contains evidence of two systems of training and testing employees. Respondent contends that Folden misrepresented its position regarding one of these tests, in that he erroneously stated that the Company relied upon the test results as a reason for transferring him to another shift. Accordingly, a description of the testing is necessary.

The Company instituted a program of employee training in 1992. It developed employee skills in statistical process control, gauges, and micrometers and blueprints. Its short name was ''QS-1.'' Employee attendance was voluntary, but the Company emphasized it and gave a pay increase to employees who passed. Company Vice President Taggert stated that 98 percent of the employees were involved in this program.

The relevant issue regarding the QS-1 program was whether employees could be compared on the basis of their relative scores. Bullock testified on direct examination that the QS-1 tests could not be used to compare employee performance, because the employees did not all take the same tests—some were exempted from certain tests based on other test scores. It was a ''pass or fail'' test, according to Bullock. Human Resources Manager Diane Ward asserted that QS-1 scores were not even recorded. Nonetheless, on cross-examination, Bullock agreed that it had records of the QS-1 tests which showed some employees who were exempt from certain tests, but showed the scores of other employees on the same test.[3] Team Leader Dickie Huff corroborated this. I accept this testimony as accurate.

### C. *The Quality Control Department and Training*

Bullock started with the Company in August 1993 and was manager of the Quality Control (QC) Department, with about 11 employees. He decided to improve employee skills and developed three levels of quality inspectors.[4] Employees were given the opportunity to select the level at which they wished to operate. Folden and two other employees elected to be classified at level III, the highest level.[5] They were so classified in January 1994.

The employees were given several weeks of training prior to taking the GD&T (Geometric Dimension & Tolerance) test to measure their skills. Folden missed the last two training sessions because of illness, but nonetheless took the test on April 7. He scored 68.5 percent, the lowest score. Thereafter, the employees voted that 70 percent was a passing score. It was the employees who made the determination based on Bullock's philosophy of ''team building.''

Bullock asserts that he told Folden he had to retake the test within 5 days, and that he had to make a score of 80. Folden contends that Bullock said he would schedule a second test within a few weeks. Folden studied the material he missed, with the assistance of Mike Furrow.

On April 20, Bullock met with Folden and handed him a memorandum. After reciting the Company's version of the events, it reads in part:

> CORRECTIVE ACTION
>
> Must retake the GD&T exam by April 23, 1994. A passing score of 80 or above will result in retaining a Level III classification. A score below 80 but above 70 will demonstrate the inability to perform at Level III requirements, as called out in the job description, and result in a forced downgrading to Level II. A score below 70 (team agreed passing score) will result in termination from the QC department based on lack of performance to comply to minimal job responsibilities of a Level II.
>
> CONFIDENTIALITY STATEMENT
>
> This conversation between Steve Bullock (QC Manager) and Folden (Quality Assurance Technician) in regard to Billy's performance (per his chosen job description) and the corrective action that must take place no later than April 23, 1994 is strictly confidential. Any sharing of this information with any other member(s) of Team Medeco will be interpreted as disruptive in nature and result in termination as per the Medeco handbook.[6]

Bullock told Folden that he would be considered the least qualified of the Level III inspectors because of the additional time to take the second test. Folden took it again within the prescribed time and scored 86.

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[3] Bullock interpreted several pages of its QS-1 records (R. Exh. 1). Thus, on the ''Guage Diagnostic'' test, Folden made scores of 68, 89, 81, and 68 (R. Exh. 1, p. 1, column ''K''). Scores of other employees are shown.

[4] R. Exh. 13.

[5] One of the other level III inspectors was Frank Butler. The transcript records the name of the third level III inspector as Mike Ferrell. Respondent contends that the correct name is Mike Furrow (R. brief, p. 6, fn. 2). The individual identified as ''Mike Ferrell'' in the transcript testified and examined a company document containing QS-1 test scores. He identified, as his, certain scores for employee ''Mike Furrow.'' For this reason, I conclude that Respondent's position is correct, and I hereby change the name ''Ferrell'' to ''Furrow'' wherever it appears in the transcript.

[6] G.C. Exh. 5. The complaint alleges the last paragraph to be violative of the Act (G.C. Exh. 1(g), par. 8). Respondent used the term ''Team Medeco'' to describe all company employees.

D. *Folden's Transfer to the Second Shift*

1. Summary of the evidence

There were seven QC inspectors on the first shift, two on the second, and one on the third. One of the second-shift inspectors was transferred to the first shift, and another was transferred to another department. Bullock decided to eliminate the third shift, transferred the third-shift employee to the first shift, and asked for a volunteer to staff the second shift. Nobody volunteered, and Bullock agreed that the second shift was not popular.

Bullock then asked the seven QC employees on the first shift to vote on a plan whereby the second shift would be staffed by rotation every 6 weeks. Folden opposed this method of selection and asked for a secret vote. According to Folden, this made Bullock angry. Folden did not vote, and the first result was 4 to 2 in favor of rotation. Two employees however, changed their minds and asked for a second vote. Folden participated in this vote, and the result was opposed to rotation. According to Folden, Bullock accused him of swaying the opinions of the technicians.

The Company posted an opening for a QC position on the second shift on April 29. Included in the requirements were completion of the QS-1 and GD&T programs.[7] There was no response to the posting.

Folden had a conversation with Bullock after he had taken the GD&T test a second time, with a score of 86. Folden testified that Bullock told him that the QS-1 and GD&T tests would determine ''who was qualified to move to the second shift or least qualified to move to the second shift.'' Folden, who had been on the first shift during his entire employment and had plantwide seniority among the QC employees, told Bullock that he would not go to the second shift. Bullock replied that Folden would either be ''off the team or on the team.'' He added that he would determine the transfer to the second shift in accordance with the Company's handbook.

The handbook provided for the Company's response to requests for a change of shift by certain designated employees, not including QC technicians. The handbook continued: ''For all other positions, shift assignment will be based on business needs, length of service within the classification and the individual's qualifications.''[8]

Bullock agreed that he had conversations with the three Level III technicians on the method of deciding the transfer issue. He told Folden that the only ''qualifiable'' data he had were the GD&T test results. Bullock again told Folden that, because the latter had to take the test a second time, he was the least qualified of the Level III inspectors. Bullock denied referring to the QS-1 scores as factors to be considered in making his decision.

Mike Furrow's GD&T test score was lower than Folden's second score of 86. Furrow met with Human Resources Manager Diane Ward and protested that the test scores should not be used to make a transfer decision, since this was not contemplated when the GD&T program was announced.

Furrow also went to QC Manager Bullock and made the same argument. He stated that, because his score was lower than Folden's second score, he should be the one transferred to the second shift. Bullock denied that this would be appropriate, since he would have to give Furrow a second opportunity to take the test. Bullock showed Furrow some QS-1 scores and said, according to Furrow: ''I could get real shitty about this, since Mr. Folden did not take the comparative section of the QS-1 testing, which was not required.''

On cross-examination, Furrow was asked whether he knew what he had scored on the QS-1 test. Furrow initially stated that he did not know. Counsel then showed him three sheets of paper purporting to be copies of QS-1 test scores and asked him to identify them. Furrow replied that they were the scores that Bullock showed him and added that another employee (Hal Williams) had prepared the copies for Bullock. Based on this identification, Respondent introduced the documents into evidence.[9]

Asked again whether his QS-1 scores were higher or lower than Folden's, Furrow replied that they were higher. Asked to explain this, Furrow replied: ''I'm looking at 68 on Mr. Folden's to 96, 96, 89, 81, 81, 71, 68, 94'' and said that he was looking at page 1 of the exhibit. As previously described, Folden's test scores on the gauge diagnostic test, on page 1, were 68, 89, 81, and 68. Furrow also had four scores for this test: 96, 81, 71, and 94.[10]

Bullock agreed that he talked with Furrow about the transfer issue and said that Furrow stated that the procedure Bullock was using was not fair. Bullock denied that he told Furrow he would base his decision on both the QS-1 and GD&T results.

Bullock transferred Folden to the second shift on May 17.[11]

2. Factual analysis

Furrow correctly identified the first number which appears on the Company's report of Folden's test scores on the gauge diagnostic test. Although Furrow gave seven numbers as his own scores on this test, he included the four actual scores recorded on the exhibit. It is highly improbable that Furrow's recitation at the hearing of Folden's first test score and four of his own could have been the result of guesswork. Although he included three extraneous scores, one was a repetition, and the other two may have been mistakes in reading or transcription.

There is thus no way that Furrow could have known these scores unless somebody showed them to him. I conclude that Bullock did show them to Furrow—indeed, this is one of Respondent's exhibits identified by Furrow. It supports Furrow's testimony about his conversation with Bullock. Furrow was a current employee at the time of his testimony, and it is unlikely that he would be stating something which was false.[12] I credit his version of the conversation with Bullock. Furrow stated his belief that Bullock would use both test scores in making the transfer decision.

The fact that Bullock made these statements to Furrow tends to support Folden's testimony that Bullock made substantially the same statements to Folden. I credit the latter's testimony as to the remarks he attributed to Bullock.

[7] R. Exh. 14.
[8] G.C. Exh. 2, p. 28.
[9] R. Exh. 1.
[10] Ibid.
[11] R. Exh. 15.
[12] *Softech, Inc.*, 306 NLRB 269, 271 (1992).

### E. *Folden's Discharge*

Furrow testified that employees in the plant asked him why Folden had been transferred. He replied, ''Test scores.'' To a plant employee, Furrow and Bullock both averred, this meant the QS-1 test, since plant employees did not take the GD&T test.

Furrow agreed that he told Respondent's counsel in a pretrial interview that the plant was upset after the transfer. There was a rumor ''buzzing in the plant'' that the Company transferred employees based on ''low test scores.'' By this, Furrow stated, he meant the QS-1 test. Dickie Huff, a team leader in another section, testified that when the QS-1 program first started, the employees believed that it would be used for some purpose in addition to providing a wage premium. Human Resources Manager Diane Ward testified that plant employees asked whether they could be bumped to another shift based on their QS-1 scores.

Bullock also heard such rumors, and arranged with Human Resources Manager Diane Ward to publish a newsletter covering various issues. The last paragraph reads:

> If you get a low score on QS-1, can you be ''bumped'' to another shift? No, shift assignment is determined by the following: business needs, seniority in the classification, and qualifications To date, no team member has been bumped to an off-shift because of QS-1 test scores.[13]

Folden read this statement on May 26, and tried to reach QC Manager Bullock by phone. He was not available, and Folden spoke with Matt Ward, a supervisor.[14] He said that he did so under the Company's ''open-door'' policy, whereby an employee could approach a supervisor with a problem.[15] After drawing Ward's attention to the statement, Folden told him that it was ''untrue'' and not what he had been led to believe. Ward testified that Folden told him that the statement ''wasn't true,'' and that the QS-1 test was the reason he was on the second shift. That evening, Ward repeated this to his wife, Diane Ward.

Folden next spoke to Second-Shift Supervisor Benji Smith.[16] He repeated his statement to Ward, that the QS-1 test had played a part in his being on the second shift. Smith told him to get the matter resolved ''through the chain of command.''

The only evidence of Folden's communication about the reason for his transfer to anybody other than supervisors is his response to Furrow's question as to why he was transferred. ''Test score,'' was Folden's response.[17]

Vice President of Human Resources Dennis Taggert testified that he was not aware that Folden had talked to anybody except Supervisors Matt Ward and Benji Smith. Diane Ward affirmed that none of the employees who spoke to her about the QS-1 test mentioned Folden's name.

The next day, May 27, Diane Ward reported to QC Manager Bullock what Matt Ward had said to her. According to Bullock, Ward reported to him that Folden had said the statement in the newsletter was ''a lie.'' Bullock consulted with Supervisors Smith and Ward and received similar information. He decided to hold a meeting of the inspectors about noon.

Folden, who was on the second shift, was not present. According to Bullock, he asked why Folden had been sent to the second shift. ''Because of test scores,'' Furrow answered. ''Which tests?'' Bullock asked. Furrow replied: ''QS-1 and GD&T.'' Bullock denied this and said that the GD&T test was the only one considered. Furrow and another employee urged that the plant employees were confused, but Bullock replied that everything was ''very clear'' and ended the meeting. According to Furrow, Bullock said that he had a ''pretty good idea'' of the source of the rumors.

Bullock then told Company Vice President Taggert that he wanted to fire Folden for dishonesty and received approval if his information was accurate. Bullock and Production Manager Robert King met with Folden on the afternoon of May 27. Bullock claimed that he asked Folden whether he had been telling people on the floor that he had been transferred to the second shift because of his QS-1 score, and that Folden replied that he had done so. Folden denied that Bullock asked this question and denied that he gave the answer attributed to him. I credit his denial. Bullock also asserted that Folden had violated the ''confidentiality'' statement and had been disruptive.

Bullock terminated Folden during this interview. In a memo to Company Vice President Taggert, he summarized his position on the QS-1 issue and the events leading to the discharge. After reciting Folden's statement that the QS-1 reference in the newsletter was untrue, Bullock stated: ''Billy actually told individuals in the factory that he was sent to second shift for this reason (the QS-1 score).'' Bullock concluded that Folden was discharged because of ''dishonest behavior.''[18] Although Supervisors Ward and Smith had promised Bullock written statements, he made his decision to discharge Folden before receiving the statements.

### F. *Lewis Rickman*

Lewis Rickman was a 10-year employee in the deadbolt lock division. He participated in the union campaign. Rickman sustained a head injury at work in early October and was sent home for medication. The next day he received a call stating that he was suspended pending his taking a ''fitness for duty'' examination at the hospital. This was the terminology for a drug screening test. On October 3, the Company issued a counseling report stating that Rickman had had nine accidents in the last 3 years, and that another would require the fitness for duty examination.[19]

Rickman took the test and passed it and then met with company officials on October 10. Team Leader Donald Clark told Rickman that it was not necessary to discuss anything. Rickman replied that the plant already knew he had been suspended, and that rumor was that it was because of use of

[13] G.C. Exh. 6.

[14] Bullock testified that Ward was a supervisor.

[15] Bullock confirmed that there was an open door policy.

[16] QC Manager Bullock confirmed that Benji Smith was a supervisor.

[17] Respondent's brief quotes this testimony as ''test scores,'' thus suggesting that Folden implied to Furrow that both scores were considered. R. brief, p. 14, fn. 7. Although Furrow testified that he told Human Resources Manager Diane Ward that ''test scores'' should not be used, he did not use the plural form in describing Folden's explanation.

[18] G.C. Exh. 7.

[19] R. Exh. 19.

cocaine and marijuana. Rickman told Clark that he did not appreciate being labeled a drug user.

Clark issued Rickman a memo listing the reasons for the drug screening.[20] The last sentence reads: ''No discussion pertaining to fitness for duty exam with co-workers as this would be disruptive to our team concept and result in further disciplinary action.''[21]

The complaint alleges that the last sentence unlawfully threatened employees with discipline for communicating with other employees regarding terms and conditions affecting their employment.''[22] Rickman quit in November 1994.

### G. *Legal Analysis and Conclusions*

The General Counsel has the burden of establishing a prima facie case that is sufficient to support the inference that protected conduct was a motivating factor in an employer's decision to discipline an employee. Once this is established, the burden shifts to the Respondent to demonstrate that the discipline would have been administered even in the absence of the protected conduct.[23]

Folden was a prominent member of the 1993 union campaign, of which the Company and Bullock had knowledge. Although Folden told Bullock in late 1993 that he was not interested in any more organizational activity, he did in fact participate in the 1994 campaign, attending union meetings and getting signatures on union authorization cards in the Company parking lot. At a cross-functional meeting in February, an employee who reported to the Company's president asked Folden how the union campaign was going and whether they had enough cards to file a petition. Folden protested this question to Vice President Taggert and to Bullock who asked Folden why the employees wanted a union. Upon learning of the new campaign, the Company showed films depicting union violence to its employees and instructed supervisors to tell employees not to sign union cards. These events demonstrated company animus against the Union and knowledge of Folden's renewed participation in the campaign.

Supervisor Bullock's animus against Folden is further shown by his handling of the GD&T testing. Folden angered Bullock by opposing the latter's plan to have ''the team'' vote on a rotation method of staffing the vacancy on the second shift. When the second vote reversed the first and rejected rotation, Bullock blamed Folden, who was simply engaging in the protected activity of objecting to conditions of employment.

Bullock's animus against Folden is shown again by his raising the passing grade on Folden's second examination from 70 to 80, after initially allowing the ''team members'' to set the passing grade. In the same vein, Bullock said that Folden would be the least qualified no matter what he scored, because he took the examination a second time. On this rationale, Folden would have been the least qualified if he had scored 100. Bullock provided no reason for starting with a team decision on passing scores, and then switching to his own judgment when it came to Folden's score.

When Furrow protested to Bullock that his procedure was unfair and that he, Furrow, should be transferred to the second shift because his GD&T score was lower than Folden's second score, Bullock countered by saying that he would have to give Furrow a second test. Furrow, in fact, was volunteering to be transferred to the second shift—and a request for a volunteer was Bullock's first method for making the selection. Yet he rejected Furrow's offer.

The Company's handbook states that one of the factors in making a shift transfer was ''business needs.'' With only one QC inspector present on the second shift, it would appear to have been in the Company's interest to have the best qualified inspector on that shift. Yet the Company selected the one which it had designated as the least qualified.

Finally, as set forth above, Respondent informed Folden on April 20 that any communication with fellow workers about his conversation with Supervisor Bullock on April 20—concerning the testing procedure—would be considered disruptive and would result in termination. This communication unlawfully restricted Folden's right to communicate with his fellow employees regarding the terms and conditions of his employment, and violated Section 8(a)(1) regardless of whether it was enforced or discriminatorily motivated. ''*The Loft,*'' 277 NLRB 1444 (1986).[24]

I conclude that the General Counsel has established a prima facie case that Folden's transfer to the second shift was discriminatorily motivated Respondent has not rebutted the General Counsel's case, and I conclude that the Company violated Section 8(a)(3) and (1) of the Act by transferring Folden to the second shift in May 1994.

The same animus against Folden establishes the General Counsel's case that his discharge on May 27 was unlawful. The Company's case against Folden is predicated on his use of the Company's open-door policy—he told two supervisors that a statement in the company newsletter was untrue. In fact, as I have found above, it was untrue—Bullock did tell Folden and Furrow that both the GD&T and QS-1 scores would be utilized in making the transfer decision. But this is not as significant as the fact that the Company based its case against Folden on a complaint that he voiced to supervisors in accordance with company policy. Although Folden told Furrow that his transfer was caused by his ''test score,'' this did not identify the QS-1 test. Neither Company Vice President Taggert nor Human Resources Manager Ward had any evidence that Folden had spoken to employees other than the two supervisors, and Bullock's case was based upon these communications. As they took place the day before Folden was fired, they could not have caused the prior tumult about which Bullock complained.

The Company's position that Folden was discharged because of ''dishonest behavior'' is thus completely without foundation. I conclude that Folden was discharged because of his union sympathies and activities, and that Respondent thereby violated Section 8(a)(3) and (1) of the Act.

The warning to Rickman—that any discussion of his drug screening test with other employees would subject him to

[20] Nine accidents in less than 3 years; leaving work without a supervisor's permission; and ''erratic'' behavior. The test was to protect Rickman and his co-workers. R. Exh. 20.

[21] Ibid.

[22] G.C. Exh. 1(j).

[23] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

[24] See also *Pepsi-Cola Bottling Co.*, 301 NLRB 1008, 1041 (1991); *Blue Cross-Blue Shield of Alabama*, 225 NLRB 1217, 1220 (1976).

further discipline—was unlawful for the same reasons given above in connection with a similar warning given to Folden.

In accordance with my findings above, I make the following

## CONCLUSIONS OF LAW

1. Medeco Security Locks, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Electronic, Electrical, Salaried, Machine, and Furniture Workers, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by restricting employees' communications with other employees regarding the terms and conditions of their employment, and by threatening them with discipline if they did engage in such communications.

4. Respondent violated Section 8(a)(3) and (1) of the Act by transferring William C. Folden from the first shift to the second shift on May 17, 1994, and by discharging him on May 27, 1994, because of his union activities and sympathies.

5. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it be required to cease and desist therefrom, and undertake certain action designed to effectuate the policies of the Act.

It having been found that Respondent unlawfully transferred William C. Folden from the first shift to the second shift on May 17, 1994, and discharged him on May 27, 1994, it is recommended that Respondent be ordered to offer him reinstatement to his former position on the first shift without prejudice to his seniority or other rights and privileges, or, if any such position does not exist, to a substantially equivalent position, dismissing or transferring if necessary any employee hired or transferred to fill said position, and to make him whole for any loss of earnings he may have suffered by reason of Respondent's unlawful conduct by paying him a sum of money equal to the amount he would have earned from the date of his unlawful discharge to the date of an offer of reinstatement, less net earnings during such period to be computed in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[25]

I shall further recommend that Respondent be ordered to cease and desist from ordering employees not to discuss terms and conditions of employment with other employees and that it be ordered to inform William C. Folden and Lewis Rickman, in writing, that its instructions against such communications and threats of discipline for engaging in such discussions are rescinded and of no effect. Although Rickman had left the Company, he may return, and in such event the warning issued to him should no longer be operative.

I shall further recommend that Respondent expunge from its records all reference to its unlawful transfer and discharge of William C. Folden and inform him in writing that this has been done, and that it will not base any future discipline of him upon his unlawful transfer or discharge.

I shall also recommend the posting of notices.

On these findings of fact and conclusions of law and on the entire record, I recommend the following[26]

## ORDER

The Respondent, Medeco Security Locks, Inc., Salem, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Restricting communications of its employees with other employees concerning the terms and conditions of their employment, and from threatening them with discipline if they engage in such communications.

(b) Discouraging membership in International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, or any other labor organization, by discharging employees or transferring them to a different shift, in retaliation for their union activities or by discriminating against them in any other manner with respect to their hire, tenure of employment, or terms and conditions of employment.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer William C. Folden reinstatement to his former position on the first shift or, if such position no longer exists, to a substantially equivalent position, dismissing or transferring if necessary any employee hired or transferred to fill said position, and make him whole for any loss of earnings he may have suffered by reason of Respondent's unlawful discharge of him, in the manner described in the remedy section of this decision.

(b) Remove from its records all references to its unlawful transfer and discharge of William C. Folden and inform him in writing that this has been done and will not be used as a basis for future discipline.

(c) Inform William C. Folden and Lewis Rickman in writing that its former orders to them barring them from discussing with employees their instructions from management pertaining to the conditions of their employment, or threatening them for doing so, are null and void.

(d) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[25] Under *New Horizons*, interest is computed at the ''short term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment) shall be computed as in *Florida Steel Corp.*, 281 NLRB 651 (1977).

[26] If no exceptions are filed as provided by 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Post at its facility at Salem, Virginia, copies of the attached notice marked ''Appendix.''[27] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order, what steps Respondent has taken to comply.

[27] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid and protection
To choose not to engage in any of these concerted activities.

WE WILL NOT restrict communications of our employees concerning the terms and conditions of their employment, nor threaten them with discipline for engaging in such communications.

WE WILL NOT discourage membership in International Union of Electronic, Electrical, Salaried, Machine, and Furniture Workers, AFL–CIO, or any other labor organization, by discharging or transferring them because of their union sympathies and activities or by discriminating against them in any other manner.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer William C. Folden reinstatement to his former job on the first shift, or to a substantially equivalent one if no such job exists, and make him whole for any loss of earnings he may have suffered, with interest.

WE WILL remove from our records all references to our unlawful transfer and discharge of William C. Folden, and inform him in writing that this has been done and that we will not base any future discipline of him upon his unlawful transfer and discharge.

WE WILL inform William C. Folden and Lewis Rickman in writing that our instructions to them barring them from discussing the terms and conditions of their employment with other employees, and threatening them with discipline for doing so, are null and void.

MEDECO SECURITY LOCKS, INC.